

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MARSHA BUCK, TROY LEWIS, JEAN )  
LEWIS, MIKE HEAD and JANET HEAD, )  
TODD CHOWNING, individually and on )  
behalf of all others similarly )  
situated, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
 ) No 4:13-CV-801 TCM  
REPUBLIC SERVICES, INC., ALLIED )  
SERVICES, LLC, d/b/a Republic )  
Services of Bridgeton, and )  
BRIDGETON LANDFILL, LLC, )  
 )  
Defendants. )

FAIRNESS HEARING  
BEFORE THE HONORABLE THOMAS C. MUMMERT  
UNITED STATES MAGISTRATE JUDGE  
AUGUST 1, 2014

APPEARANCES:

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(Appearances continued on Page 2.)

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(PROCEEDINGS BEGAN AT 9:32 AM.)

THE COURT: Good morning, ladies and gentlemen. My name is Tom Mummert. I'm the judge presiding over this fairness hearing this morning, and I have a few comments to make, and then we're going to start the process.

The lawsuit that we're here all concerned with is -- the name of -- the official name of the lawsuit is Marsha Buck, Troy Lewis, Jean Lewis, Mike Head, Janet Head, and Todd Chowning versus Republic Services, Inc., Allied Services, LLC, and Bridgeton Landfill, LLC.

I've been on the federal bench for about twenty years, and I tell you that because I want to make sure you know that I have not -- and, sorry. I'm trying to get organized here. I apologize. I have not -- I've handled many, many class actions, a bunch of them. I would put the number over ten and maybe somewhere between ten and twenty, and every one of them settled. I've never -- actually, I've never heard of a class action case that was tried in this district as long as I've been around.

I tell you that just to kind of, perspective, to know how things work with class action lawsuits. Most -- the most recent -- to tell you how the various interests and who files class action lawsuits, the most recent class action lawsuit that I had, dealt with a bunch of hospitals in the state of -- the entire state of Missouri. A number, maybe twenty,

1 twenty-five hospitals, formed a class of a classaction  
2 against a manufacturer of a catheter manufacturing company,  
3 and they were fighting about the warranties for the catheters  
4 and the pricing and language in the warranty. And that  
5 resolved itself probably about six months ago.

6 Most class actions deal with people being  
7 overcharged, if you really think about it -- the banks  
8 overcharging a service charge, service fees, or perhaps credit  
9 card companies. And the class action statutes were created  
10 because many times the harm that the people are complaining  
11 about in their lawsuit is so small that they really have a  
12 tough time finding an attorney to bring it to court. You  
13 can't hardly -- you wouldn't -- it wouldn't be very logical to  
14 file a lawsuit against a bank over a two-dollar service  
15 charge. It just wouldn't make any economic sense. And that's  
16 why the class action lawsuits were created, quite frankly.

17 This is a different animal that we're here with  
18 today. It is -- it's obviously -- you all have serious  
19 concerns about your real estate and where you live, your  
20 homes, and it's perfectly suited for a class action, and  
21 that's why we are here.

22 Another thing unusual about this case is that of all  
23 the class actions I've been involved in, I've only had -- this  
24 is only the second fairness hearing that I've had. A fairness  
25 hearing results from the federal rules that require a judge to

1 make a finding that the settlements are fair, reasonable, and  
2 adequate, the disposition of the case.

3 Now, I do that all the time when the lawsuits are  
4 settled, but not often do we have a fairness hearing where  
5 people have objections to the settlement, and that's why you  
6 have a fairness hearing. And that's why we're doing this this  
7 morning, because we received about twenty -- or I received --  
8 or the Court has received -- about twenty, twenty-five  
9 objections.

10 I want to tell you all that I have read every single  
11 one of your letters. Every single one of your -- everything  
12 you filed I have read. And I'm very sympathetic with many of  
13 your concerns, and I understand why you're here and what your  
14 issues are.

15 Again, the objections are -- the objections created  
16 the need for this fairness hearing, and eventually I'm going  
17 to have to make a finding, if I accept the settlement  
18 agreement, that the settlement dollars and how everything  
19 works out is fair, reasonable, and adequate.

20 The next thing we're going to do is -- I'm going to  
21 tell you the process here. I'm going to have both sides, the  
22 plaintiffs' lawyers speak, and they're speaking to me but  
23 they're also speaking to you, and then we're going to have the  
24 defense attorney, the folks representing the defendants,  
25 speak. And, again, he will be speaking to me and to you.

1           And then I'm going to go down the list of every  
2 single person that wrote me a letter objecting to this, and  
3 I'm going to call each one of you -- if you're here, great; if  
4 you're not, great -- and I'm going to ask if you want to come  
5 up to the lectern and say something. And you don't have to.  
6 This is an invitation. It's not a mandate.

7           If you want to say something, if you think your  
8 letter is sufficient and there's no need to say anything  
9 further, that's fine. If you want to come up and say  
10 something, that's fine.

11           I'll talk about this again before we start what I'm  
12 going to call the roll call, but before -- I just want to make  
13 sure when you do come up to say something, this is a  
14 courtroom. For me, I've worked in courtrooms since 1976, and  
15 I've been a judge for thirty years plus, so this is a very  
16 sacred place for me. And I know you all will be ladies and  
17 gentlemen, and that's what we expect in courtrooms. And I  
18 know you'll treat the courtroom the way it should be treated  
19 and the procedure as well as it should be treated

20           I would ask your comments to be concise, on subject,  
21 and relevant. And I hope I don't have to cut anybody off in  
22 the sense of time, but I don't want to go on -- I don't want  
23 folks going on and on and on, repeating what we keep hearing  
24 over and over again.

25           You'll each have a chance to say what you want to

1 say, and I would just ask you to be organized in your thoughts  
2 as best you can. And I know public speaking is not  
3 everybody's deal, and I don't expect you to stand up here and  
4 be Jimmy Stewart in, you know, one of those old great movies.  
5 So just tell us what you think and how you feel, and we'll  
6 take it from there.

7 All right. That being said, we're going to start  
8 with the attorneys. Ms. Jo Anna Pollock is from the Simmons  
9 law firm is going to be the first to speak.

10 Ms. Pollock, you've got the floor.

11 MS. POLLOCK: Thank you, Your Honor. Thank you for  
12 the opportunity today to have the fairness hearing. Before I  
13 go into what I want to say, I want to be clear. We're not  
14 here today to discuss whether or not what happened to the  
15 people in Bridgeton is fair. It's not fair. We're talking  
16 about people's lives. We're talking about their property.  
17 We're talking about where they raise their family and their  
18 children.

19 Although it's not fair, as unfair as it could be, we  
20 worked to get an option on the table for people today, an  
21 option that they can take today, not three years from now or,  
22 worse yet, never, which is something that could very  
23 reasonably happen in a case that's this complicated.

24 As I said, this is an option, and that's the nature  
25 of this type of class action that we're prosecuting as an

1 opt-in class action. If people don't want to take the option  
2 and settle today this case, that's fine, but before they make  
3 the decision, they need to ask themselves questions. They  
4 need to ask: How likely are they to succeed on the merits?  
5 How long will it take them to do so? How much money will it  
6 cost them to do so? What are the risks that they face? And  
7 are they willing to deal with a lawsuit every day for the next  
8 several years?

9 After they answer those questions, they can still go  
10 ahead, pursue their lawsuit, or they can take what we believe  
11 to be a fair settlement in this case.

12 Before I explain why we believe this settlement is  
13 fair and adequate, allow me to back up first and explain how  
14 we got here today. Our firm filed a lawsuit on behalf of  
15 class representatives, residents that live in the  
16 neighborhoods of the Terrisan Mobile Home Park, the Gallatin  
17 condos, and the Spanish Village neighborhood.

18 We filed the suit because the landfill that they live  
19 next door to was releasing noxious odors into the  
20 neighborhood, compromising their abilities to use their  
21 property, spend time outside with their families, and  
22 otherwise just feel safe and secure in their neighborhood.

23 After we filed suit, we embarked on a very lengthy  
24 discovery process. We deposed several of Republic's  
25 witnesses. Our class representatives were also deposed. We



1 reviewed thousands of documents. We hired consultants. We  
2 hired experts. The three experts that we hired prepared  
3 expert reports, and we filed our motion for class  
4 certification.

5 All of that went into the process to ask the Court  
6 whether to allow this case to proceed as a classaction, and,  
7 rest assured, the defendants vigorously opposed everything we  
8 were doing every single step of the way.

9 The Court ordered us into court-ordered mediation,  
10 which we had no choice but to do because the Court ordered it,  
11 and we selected a mediator that was independent who has  
12 experience in looking at cases like this and helping the  
13 parties see if they can reach a fair resolution, and, in fact,  
14 that's what we did.

15 The Court hasn't ruled on the motion for class  
16 certification yet, and however the Court was going to rule on  
17 it, if it was going to allow the case to proceed as a class  
18 action or not, either side was going to appeal. So no matter  
19 what, we were looking at an appeal up to the Eighth Circuit  
20 which adds another year easily to the case.

21 So when we worked at the mediation to see if we could  
22 reach a resolution on behalf of our clients, on behalf of the  
23 residents of the landfill, we knew that there were certain  
24 risks going forward, and we knew that there was also going to  
25 be a lot more expense going forward.

1           Ultimately, after I think it's about twelve hours of  
2 mediation that day, the parties finally reached a deal that  
3 both sides could agree to, and the nature of that agreement is  
4 what we called an opt-in settlement. And why this settlement  
5 is different than most class action settlements is that in  
6 this case your rights are only bound if you affirmatively  
7 decide to participate in the case and submit your claim form.

8           Most class actions, on the other hand, your hands are  
9 bound by the court if you sit idly. So those people risk, the  
10 people that sit in silence, risk having their rights taken  
11 away from them. That's not the case here. People's rights  
12 aren't being compromised in this case unless they step  
13 forward, fill out a claim form, and submit it.

14           That alone is what makes this case and this  
15 settlement proposal fair and reasonable. But there's  
16 additional reasons as well. First of all, when we -- another  
17 issue that came up on the settlement process and during the  
18 negotiations was the issue of health concerns, and I know a  
19 lot of people in the courtroom have those concerns. They  
20 voiced those in their objections.

21           We were very sensitive. We represent thousands of  
22 people across the country that have injuries. We're very  
23 sensitive to those types of claims by people, but we had to  
24 make sure that we negotiated a settlement where people's  
25 future rights, should something go wrong in the landfill in

1 the future, they still had those rights. And that was a  
2 hard-fought negotiation point because, of course, Republic  
3 wanted everyone to waive all their past rights and all their  
4 future rights going forward.

5 So after a very, very lengthy discussion, we were  
6 able to reach something where we agreed to -- for the people  
7 to give up their past current -- their past and current health  
8 claims because, quite frankly, we had been in the  
9 neighborhoods, we had been to the public meetings, we had  
10 spoken with so many people, and we weren't hearing that people  
11 had health concerns.

12 To be sure, in case people did have health concerns  
13 that they thought were related to the landfill, we, in the  
14 claim form, added specific questions to uncover this  
15 information. And we asked people: Identify if you think  
16 anything is related to this landfill and exposure and what  
17 you've endured; identify it for us. And the people that did  
18 we followed up personally. We've asked them to give us more  
19 information, and some people they don't know if it's related  
20 or not, and we don't know either because we hadn't  
21 investigated. And we told them: This isn't a settlement for  
22 you. We just -- we recommend that you not participate in the  
23 settlement so they can still have all their future rights  
24 going forward.

25 So that was our attempt to address any of the health

1 concerns. To the extent you have health concerns currently,  
2 this probably isn't the settlement for you, or at least you  
3 need to know going into it you're giving up those rights. If  
4 anything in the future occurs from the day after you sign your  
5 release, if you get a diagnosis that could be related to the  
6 landfill exposure, you have all those rights going forward.

7 Another issue that came up in the negotiation was the  
8 defendants were only willing to put a certain amount of money  
9 on the table, and, I mean, they were dead set on that. And so  
10 we agreed, as the plaintiffs' counsel, to reduce our  
11 attorneys' fees from 33 percent down to 25 percent in an  
12 attempt to provide more money into the people's pockets.

13 So the settlement terms ultimately -- the people that  
14 are bound by this settlement, if they decide to participate,  
15 the people that qualify for the settlement, if you will, are  
16 owner occupants and tenants. In other words, it's the people  
17 that actually live near this landfill in the neighborhoods of  
18 Spanish Village, the Terrisan Mobile Home Park, and the  
19 Gallatin condos.

20 Any time between the dates of November 1, 2010, and  
21 December 5, 2013, if you live in Spanish Village, your  
22 household would receive \$35,000; if you live in the mobile  
23 home park, your household will receive \$20,500; if you live in  
24 the Gallatin condos or the apartments, your household would  
25 receive \$5,250.

1           We reached these settlement terms and then -- and  
2 part of that settlement was also the assumption that there had  
3 been no -- well, the fact that there had been no allegations  
4 about radiation contamination in the area. As we were in the  
5 midst of meeting with people and answering questions,  
6 allegations were made; a lawsuit was filed that there has been  
7 radiation contamination from the landfill into the local  
8 community. So we got questions. And we were concerned. Now  
9 there's an ambiguity in the release.

10           So we contacted the defendants, and we talked to the  
11 lawyer that is handling that other lawsuit, and we made sure  
12 that this lawsuit only covers the situation of the odors. If  
13 there is anything that happens in the future with the landfill  
14 and radiation, all those rights are still held by the people  
15 even if they participate in the settlement.

16           The Court has four factors under the Eighth Circuit  
17 law that it needs to apply to determine whether or not the  
18 settlement is fair and adequate, and the first one is the  
19 plaintiffs -- weighing the plaintiffs' merits versus the  
20 settlement terms. And, I mean, it's a fact we had to concede  
21 when we were evaluating the risk of the case and the proper  
22 settlement values for people, odors are stronger at the source  
23 of the odor, and they diminish the further away from the  
24 source that you get, and so we had to be able to reflect that  
25 fact in the values of the settlement. So the people that are

1 in the condos, that live further away, are receiving less  
2 money than the people that live closest to the landfill.

3 Another thing that we had to address is that the  
4 odors disperse differently when there's this intervening  
5 Highway 70 in the way. So those were two issues on the merits  
6 that we had to consider in reaching the settlement terms that  
7 we reached.

8 The second factor is Republic's financial condition.  
9 It's not an issue here. They have -- they are a very large  
10 company, they are very successful at what they do and they  
11 have a lot of insurance, from our perspective. So that wasn't  
12 an issue for us.

13 The third factor is the complexity and the expense of  
14 additional litigation. And as I said before, we knew that  
15 there was going to be an appeal on this case just only on the  
16 issue of class certification, and that was only halfway  
17 through the case. We still had to go into the merits of the  
18 case. And, you know, should we take on the risk of appearing  
19 before a jury of strangers? I mean, that's anyone's guess as  
20 to what a jury can do. Any lawyer and judge is well aware of  
21 that. What can appear to be a slam dunk can actually hit the  
22 rim and go out of bounds. So that's something we had to  
23 consider.

24 The last factor is the opposition to settlement.  
25 Twenty-nine objections have been filed from twenty households

1 in this case, and that represents about 2 percent of the  
2 overall members that we've identified that could otherwise  
3 participate in the case.

4 It's our position, because of the opt-in nature of  
5 the settlement, that 2 percent shouldn't derail the 948  
6 people, or 76 percent of people, that want to participate in  
7 the settlement. To the extent the objections after people  
8 voice their concerns today, if they still aren't satisfied,  
9 they still want to pursue their case, they can do so. It's  
10 not a problem. They won't lose anything.

11 The last matter before the Court is the plaintiffs  
12 had filed a petition for their attorneys' fees and for their  
13 cost, and the petition asked for \$1,154,984.86, and that is  
14 based on the 25 percent of the common fund toward the  
15 settlement. And, you know, I can tell you from looking at the  
16 time that if the clients would have been paying us hourly to  
17 handle the case, we're actually asking for less money than  
18 what the people would have had to pay us out of their own  
19 pockets. So certainly these common fund type of settlements  
20 have been approved in several cases. In this case it should  
21 be approved as well.

22 Finally, Your Honor, while class actions may seem  
23 unfair in certain cases, this just isn't one of those cases.  
24 We've spoken with hundreds of people. We've had several  
25 meetings. We've met with them personally and by phone. And

1 the entire time this has been a transparent process, where  
2 people are informed, they can ask questions, and they can  
3 decide whether or not they want to participate.

4 We have almost a thousand people that have chosen to  
5 stand together in this case, proceed streamlined, efficiently,  
6 and uniformly, and divide the cost in a manner that is  
7 reasonable for them to ensure the maximum recovery that they  
8 can.

9 So for these reasons, Your Honor, I'm asking that the  
10 Court will approve the settlement, enter an order finding the  
11 settlement fair, adequate, and reasonable, overrule the  
12 objections, and approve the petition for fees and costs.

13 Thank you.

14 THE COURT: Thank you, Ms. Pollock.

15 Before Mr. Beck steps up, one other thing I failed to  
16 mention to you all that makes this case different than other  
17 class actions. Under the Federal Rules of Civil Procedure,  
18 class actions in federal court are actually opt-out class  
19 actions. That means you're automatically included in the  
20 lawsuit unless you say you don't want to be included in the  
21 lawsuit. Here is the opposite. This is an opt-in. If you're  
22 not -- if you don't say you're involved in a lawsuit, then  
23 you're not, and your legal rights continue, which I think Ms.  
24 Pollock covered. I just wanted to reemphasize that.

25 All right. Mr. Beck, Mr. William Beck, is an



1 attorney from Lathrop and Gage from Kansas City and is going  
2 to present the defendants' version.

3 MR. BECK: Morning, Judge. May it please the Court?

4 THE COURT: Morning.

5 MR. BECK: I know that there are some folks in the  
6 audience particularly who think that this settlement isn't  
7 enough, and the first thing I'm going to do is add something  
8 to it, and that is an apology.

9 Bridgeton Landfill inherited a situation that has  
10 caused a problem. It's been an annoyance to our neighbors.  
11 We've been working day and night and spending literally  
12 hundreds of millions of dollars, with no revenue coming in  
13 from the landfill, trying to address it.

14 We hope we've done a good job of trying to solve it.  
15 We're not done. We have a lot yet to do, but we know that  
16 there were people who felt that their use and enjoyment of  
17 their homes was impacted, and we don't like that. We don't  
18 like being the cause of that, and we want to just express, as  
19 we have publicly before, an apology.

20 I'd like to go into the nature of the case just  
21 briefly and say that this was a case seeking damages for  
22 temporary nuisance. That's a strategic decision the  
23 plaintiffs' lawyers made. It actually opens up more damages  
24 for the plaintiffs because, as opposed to just being limited  
25 to "how much was my property devalued," you can actually

1 recover sums that can be whatever the jury says for loss of  
2 the use and enjoyment of your property. So it was a good  
3 decision. It simply means there's a nuisance that started,  
4 that continued, and it can be stopped. And if it can be  
5 stopped, it's a temporary nuisance. And in those cases there  
6 is not a recovery for loss of market value of the property.  
7 The recovery under the law is based on: How much use and  
8 enjoyment of my home was I deprived of based on the  
9 defendants' conduct?

10 And, therefore, when the settlement negotiations  
11 occurred and the mediation occurred, the focus was, of course,  
12 on: What was the degree of impact, and how did it affect  
13 people?

14 There were some people who lived in a very nice  
15 single-family neighborhood very close to the landfill, called  
16 Spanish Village, who have a lot of outdoor space. They have  
17 yards that they'd like to use. They'd like to barbecue.  
18 They'd like to play outdoors. They have a park. And those  
19 people had what we saw as a relatively significant claim for  
20 loss of use and enjoyment that we wanted to resolve. Those  
21 people are getting the most money.

22 There are people who are, frankly, closer to the  
23 landfill than Spanish Village who live in the mobile home  
24 park, who have very nice mobile homes. Many of them have  
25 built, for example, porches that add on to their mobile homes

1 so they can enjoy the outdoors but don't have the same degree  
2 of outdoor use, for example, as the single-family homes in  
3 Spanish Village, but they're closer to the landfill and  
4 they're in the direction where the wind most frequently  
5 travels. And it was negotiated that they should receive the  
6 second greatest amount of money of \$20,500 per home.

7           There was a third group of people as to whom there  
8 were some differences, and those are the folks in the Gallatin  
9 condos and apartments. One of the differences is they were  
10 further away. They were actually at the edge of the one mile  
11 limit. We measured center to center and got 1.02 miles.

12           They are across a highway, a federal interstate,  
13 Highway 270, which carries a lot of traffic, and from the  
14 perspective of air dispersion modeling, which became a huge  
15 issue among the experts in this case, that is a huge factor in  
16 helping disrupt the flow of wind carrying odor from a source  
17 to somebody's home. And, therefore, just on a predicted basis  
18 one would expect less not only because it's twice as far as  
19 the mobile home park, but also because of that disruption as  
20 odor can fan out in the air. So we wanted to recognize that.

21           In the mediation, Your Honor, the question of how  
22 much is awarded to each area was negotiated literally  
23 separately, and we thought that the right number for the folks  
24 in the Gallatin condos and apartments was much smaller number  
25 than we ended up agreeing to, but in order to resolve the

1 whole case or to try to resolve as much of the whole case as  
2 we could, we agreed to a number that was much, much higher  
3 than we came in expecting and prepared to pay.

4 Overall, this litigation did more work within the  
5 period of, say, six months, between June and September of  
6 2008, than most cases I've had in thirty-five years have done  
7 in three years. There were literally over one million  
8 documents that we produced and that the plaintiffs had to  
9 review between our own documents and those produced by our  
10 consultants that we had to review to make sure that they were  
11 producible and relevant.

12 The plaintiffs incurred over a million two in time.  
13 They're asking for somewhat less than that in attorneys' fees.  
14 We incurred more than they did. The plaintiffs incurred  
15 \$251,000 in expenses for consultants and experts and  
16 deposition cost and that sort of thing. We incurred more than  
17 four times that amount defending the case, partly because of  
18 this massive discovery effort where we produced a tremendous  
19 amount of information in a very short time.

20 There was very aggressive discovery and expert  
21 practice on both sides. The people who were most involved  
22 were deposed for long periods of time and asked tough  
23 questions, and it enabled the parties to come to an early  
24 evaluation of the case that is good for litigation.  
25 Litigation should settle early. Lawyers should be able to

1 figure out what a case is worth early, and that's why the  
2 decisions in the Eighth Circuit and elsewhere acknowledge that  
3 there's a presumption that settlement should be approved.  
4 They've been negotiated between experienced counsel, before  
5 experienced mediators, and there's been a lot of back and  
6 forth, and that has resulted in what is before the Court  
7 today.

8 I want to touch briefly on some of the objections,  
9 Your Honor, that have been filed and talk about some of the  
10 points that are raised. First of all, we believe that the  
11 amount of money involved in this case is substantial. It's  
12 certainly substantial to us. If there is 100 percent  
13 participation, it will be \$6.8865 million. Obviously, if some  
14 people opt out, it will be somewhat less.

15 As of right now, there are only 80 people who  
16 formally have opted out, but there are a lot of people who  
17 still haven't responded. Nonetheless, considering that this  
18 is an opt-in settlement, considering that no one is bound by  
19 the settlement unless they choose to be bound, the 76 percent  
20 acceptance rate is phenomenally high and is an indication that  
21 the overwhelming majority of the people who had the chance to  
22 make a decision decided that the settlement was for them.

23 As Ms. Pollock said, we recognize there will be  
24 people who feel the settlement is not for them. Either they  
25 don't like the money, they don't like the release, and we

1 respect that. And we agreed that those people would not  
2 accidentally be bound but simply would be bound only if they  
3 chose to sign up for the settlement.

4 And that factor, which again is unique in this case,  
5 is truly an answer to every single objection that has been  
6 filed, Your Honor, because if one of the objectors says,  
7 "That's not a fair allocation of my area," it's entirely  
8 within their rights to stay out of the settlement, file their  
9 own suit with their own counsel, and see if they can recover  
10 more money than that.

11 If there are people who think, "I have a medical  
12 problem that I'm worried would be barred by the settlement,"  
13 it exists today, then they have the right to stay out and to  
14 see if they can negotiate a different settlement with us.

15 For people who have something happen in the future,  
16 we supplied to the Court and, consistent with our discussion  
17 with the Court yesterday, we actually hand delivered to every  
18 single objector the brief that we had filed together with the  
19 declaration we filed from Dr. Deb Gray, who's our toxicologist  
20 who works on the Bridgeton Landfill and has for a long time.

21 Dr. Gray has looked at a very, very large database of  
22 air monitoring data for chemicals, for radiation that have  
23 been collected at the landfill on a virtually continuous basis  
24 for a very long period of time, more data points than most air  
25 monitoring studies ever have.

1           And based on all of those data, her conclusion is  
2 that there is zero increased risk to the health of our  
3 neighbors from anything that has been detected in any and all  
4 of that monitoring even when added to the things we're exposed  
5 to in daily life, like gas stations and so forth.

6           So that is at least some good news that we can all  
7 enjoy, but we also provided in the settlement because people  
8 are worried about the future, partly because of the way the  
9 media have reported about Bridgeton and about West Lake, that  
10 people may be concerned about what might happen in the future.  
11 And if people are diagnosed with an illness in the future that  
12 they believe is related to the landfill -- we don't have any  
13 expectation that would occur, but if they are, they keep those  
14 rights under this settlement.

15           One question that arose in one of the objections was:  
16 What is the date for determining what's in the future? And  
17 that's been taken care of in the final approval order that's  
18 been submitted in draft. And the answer is: Anything that  
19 happens to the date this person signs their settlement  
20 agreement and release would be blocked by the release, but  
21 anything diagnosed in the future after that would still be  
22 available for lawsuits if that should happen.

23           There is also the issue, of course, the landfill is  
24 next to the West Lake Landfill superfund site which, in 1973,  
25 received some low-level radioactive material as a gift of

1 cover soil and, not knowing what they had received, used it as  
2 landfill cover. And people are very concerned about that, and  
3 there's a lot of media and social media attention to that.

4 There's been a lawsuit filed by Mr. Finney, who will  
5 speak, alleging that across a 28-square-mile area centered  
6 around the landfill, 3-mile radius in every direction, that  
7 across that area all of the property is contaminated with some  
8 radioactive fallout and therefore there should be a class  
9 action appointed.

10 That was filed after the settlement but before people  
11 had to make decisions, and that raised concerns in people's  
12 minds. And, therefore, we attempted at the request of class  
13 counsel to address those concerns by providing an amendment to  
14 the settlement agreement that was optional in which people  
15 could have a provision to the effect that if there is any  
16 physical radionuclide contamination of their property in the  
17 past or in the future, they're not barred from making a claim  
18 based on that if a claim otherwise exists.

19 The law that governs that is called the  
20 Price-Anderson Act. If Mr. Finney gets into that, I might  
21 respond just briefly about how that act works in our opinion,  
22 because I think that the plaintiffs have been protected on  
23 that, and we'll cover that when the time comes.

24 There were a few other questions that were raised in  
25 settlement -- or in the objections. One was the date which we



1 addressed. One class member wanted more time to decide, and  
2 that was granted.

3 One question that arose with class counsel is we made  
4 it possible for people to improve, from their standpoint, the  
5 release by having this addendum signed that protects their  
6 right to claim radiation claims, and some people didn't sign  
7 that. And class counsel was worried that that would lead to a  
8 situation where some people wouldn't have the same rights as  
9 others.

10 And so we agreed as an additional accommodation to  
11 settlement to provide -- and the final order, if the Court  
12 signs it, will provide that we will not -- Bridgeton Landfill,  
13 its parent company, its affiliate will not seek to use that  
14 release to bar claims that would have been preserved by the  
15 addendum just because a person didn't get in the addendum.  
16 We're going to treat the addendum protection as being  
17 applicable to everyone even though some didn't sign it and  
18 turn it back in, because this isn't about tricking people into  
19 doing things. This isn't about having people lose rights  
20 because they don't file a second form. We tried to be the  
21 same with everybody.

22 All I have to say beyond that, Judge, is I want to  
23 make a brief statement about the form objection that  
24 alleges -- from the condominiums -- that alleges that this is  
25 one of those cases where the class counsel have kind of set up

1 the class to not get anything in order for the class counsel  
2 to get a lot of money.

3 And there are such cases. We open our mail every  
4 week, and there's some class action where we get 30 cents and  
5 the lawyers get a million dollars. This is not one of those  
6 cases. I have seen, as the opponent of these lawyers, a  
7 tremendous amount of effort on their part. This would not  
8 have been produced without that effort. I think it is a fine  
9 thing as a brother lawyer to see a lawyer reduce what they  
10 could have had as their fee to a lower level in order to  
11 provide more to their clients. And I think the amounts  
12 involved in this case, Your Honor, are significant, and the  
13 recovery involved in this case is significant.

14 The fact that class counsel as opposed to taking the  
15 usual third, which was their contract rate, takes a fourth  
16 simply means that they are ceding to the class members over  
17 half a million dollars they could have had and that the Court  
18 probably would have approved.

19 So I want to say on their behalf they've done a  
20 tremendous job representing their clients. This has been hard  
21 fought throughout. We've tried to represent our clients in  
22 the same fashion, and we think this is a fair settlement that  
23 the Court should approve.

24 THE COURT: Thank you. Before I start calling folks  
25 to come and speak, I want to take Mr. Beck off the hook a

1 little bit. I know you all received these various documents  
2 last night by hand delivery. I directed Mr. Beck to do that.  
3 I wanted to make sure you had all the proper documents that  
4 are relevant to the court before you came in here and had a  
5 chance to speak, at least address the issues.

6 Again, I'm going to ask you all to be concise,  
7 respectful, and relevant when you're making your presentation  
8 to the Court. And I'm going to take in order of folks that  
9 filed their objections, that's the order that we're going to  
10 take you all. And I didn't do this just to make Mr. Finney go  
11 last, although his client was the last one to make an  
12 objection.

13 And, again, when I call your name, if you don't want  
14 to say something, you don't have to. I'm not really making  
15 you. It is up to you to come up here and make a statement at  
16 the lectern if you so choose. So please use your own  
17 discretion.

18 The first is Mr. Elmer and Ms. Margaret Klump. Are  
19 they in court here today? Mr. and Mrs. Klump? Okay. The  
20 Court does not see anyone who raised their hand or is stepping  
21 up. I'll assume they are not here and do not -- and if they  
22 are here, they don't wish to speak.

23 The second is Mr. Rick Sutterfield. Mr. Rick  
24 Sutterfield, are you here?

25 MR. SUTTERFIELD: Yes.

1           THE COURT: Mr. Sutterfield, do you want to come up  
2 and say something, or would you choose not to, Mr.  
3 Sutterfield?

4           MR. SUTTERFIELD: I choose not to.

5           THE COURT: Thank you, Mr. Sutterfield. Somebody  
6 else want to speak for you?

7           MR. SUTTERFIELD: Yes. My wife.

8           THE COURT: Mary Beth Sutterfield, I got you. And  
9 she's my next person.

10          Ms. Sutterfield? Thank you. Morning.

11          MS. SUTTERFIELD: Hi. I guess what I want to say is,  
12 is I'm most concerned about the loss of property value from  
13 the smell. I don't think anybody here, unless you've woken up  
14 in the middle of the night on a nice evening, 60 degrees, with  
15 your windows open and you can't breathe.

16          I live off Gallatin. I realize these people don't --  
17 the smell travels far worse than you would ever imagine. I  
18 don't know what 70 has to do with it or the airplane traffic,  
19 because I've heard that, too, could be a concern, but our  
20 property value's not going up. It's going down. We'll never  
21 be able to sell. Who wants to buy that place? I just can't  
22 imagine it stopping.

23          And then the continued construction that they have  
24 going on, for the radiation they're building a barrier wall  
25 now. So when that starts, the smell's not going to get

1 better. It's going to get worse. It's going to get far  
2 worse. It's not done.

3 And I think that's the reason we're kind of jumping  
4 the gun when the smell is going to get probably twice as bad  
5 as it ever has been as soon as they open the landfill,  
6 because, from what I understand, there won't be any way for  
7 them to regulate the odor and the gas and fumes that are  
8 coming out of it at that point until they're done with the  
9 construction.

10 Another problem, I don't like the way -- obviously,  
11 you've all talked about it already -- the way -- I live the  
12 furthest away that's included. I'm also someone who has a  
13 whole lot more invested in my home than, say, the mobile home  
14 park, and that loss of property value, I think, should be  
15 taken into consideration if I ever choose to sell.

16 I know people who live in Spanish Trace, and the  
17 homes -- they're beautiful. I know people who live in the  
18 mobile home park also. I know people there that have spent  
19 ten thousand dollars for their mobile home. I spent more than  
20 that for my condo. Quite a bit more. And the loss of value  
21 is going to be quite a bit more because I have more invested.

22 I also feel like -- and I know they say they are  
23 working on our behalf. I do feel like -- and he addressed it  
24 as well. I feel like there's been pressure in the  
25 neighborhood, people canvassing the neighborhood and knocking on

1 doors and saying, "You really need to sign this or you're  
2 going to lose out." Well, I think that's crappy. I think  
3 it's pressure. I think they want to seal the deal. I think  
4 they both want to get it over with, with as little hassle as  
5 possible. Basically, everybody over here just sit down and  
6 shut up. Here's your money. Don't complain anymore.

7 And I just think we're in for a whole lot more smell  
8 before this is over with, and it's going to be horrible. And  
9 I'm not talking about radiation. I'm just talking about the  
10 smell that's going to come out when they try to correct the  
11 problem that was done years and years and years ago.

12 He also made a comment too. If I can remember, you  
13 said there's no -- zero increased risk. Increase over what?  
14 Where is your starting line?

15 THE COURT: You can put that down in your notes, and  
16 when you please respond to it at one time when -- if you don't  
17 mind, I will have him respond when all the --

18 MS. SUTTERFIELD: I also felt kind of concerned. I  
19 know I made several phone calls to the counsel and trying to  
20 make sure I was following the rules. I didn't want to be -- I  
21 wanted to be heard, but I didn't want to be left out.

22 THE COURT: Got it.

23 MS. SUTTERFIELD: So -- and I guess I'm a little  
24 confused still, even after multiple calls, because I've been  
25 told different things each time I've called. I filed my

1 objection, and I was told that I could do that for my  
2 household as a whole even though I've got myself and three  
3 kids that live in the household. So I filed one objection for  
4 the whole household.

5 Well, I called back and they're telling me, well, you  
6 know, they've got these people in the neighborhood canvassing.  
7 They're telling my two older sons that also live in my condo  
8 that, "You know what? You didn't file an objection. You're  
9 left out. So if you don't take the money now, you've opted  
10 out."

11 Well, I called and I talked to one of their guys.  
12 His name is John something. It was probably my fourth or  
13 fifth call at this point. And I was pretty upset because I  
14 had gone above and beyond to try to make sure I'm doing what  
15 they tell me to do. So I need to know, I mean, is this payout  
16 per person? Is it per household? Is it --

17 THE COURT: It's per household.

18 MS. SUTTERFIELD: Okay. That's what I thought, and  
19 that's why I filed it per household even though they told me  
20 that everybody had to turn in an objection.

21 THE COURT: You filed a couple amendment notices  
22 yesterday.

23 MS. SUTTERFIELD: I tried to.

24 THE COURT: Well, you did. I got them yesterday.

25 MS. SUTTERFIELD: I know. Well, I didn't know if I

1 did it well or --

2 THE COURT: You did fine. You did fine. I got them  
3 yesterday afternoon.

4 MS. SUTTERFIELD: Okay. And that was my point.  
5 That's what he told me. He said I need to make sure -- send  
6 him something --

7 THE COURT: Yeah. I think that was superfluous,  
8 filing it, but it doesn't hurt.

9 MS. SUTTERFIELD: Well, and that's just it. I was  
10 just trying to make sure I again understood. I'm not a  
11 lawyer, obviously. So I'm just very concerned. I don't think  
12 the smell's stopped. I think we've jumped the gun. I think  
13 we've got a whole lot worse to come. And our property  
14 values -- they're just going to go into the crapper.

15 THE COURT: I appreciate your concerns, and I really  
16 appreciate your comments. Thank you, ma'am.

17 MS. SUTTERFIELD: Thanks.

18 THE COURT: And I apologize if I am mispronouncing  
19 names, starting with the next one, I suppose. Mr. Parrino?  
20 Phil Parrino? Is Mr. Parrino here? Do you want to speak, Mr.  
21 Parrino?

22 MR. PARRINO: No. I go along with what Mary Beth was  
23 talking about.

24 THE COURT: Yeah. And if anybody wants to say, bok,  
25 they reiterate or would like to sign off with the wonderful



1 comments by Ms. Sutterfield, you can do that also if you don't  
2 want to repeat it. Thank you, Mr. Parrino. Did I pronounce  
3 your name right?

4 MR. PARRINO: Yes, you did.

5 THE COURT: Perfect. That will be the last time that  
6 happens today.

7 Sylvia Barfield. Ms. Barfield, are you here?

8 Geraldine Zoll? And I think there's a Michael  
9 Vardeman who's also on that letter, those two names on it. Is  
10 that right, Ms. Pollock?

11 MS. POLLOCK: Your Honor, it's Mitchell Vardeman.

12 THE COURT: I'm sorry. Vardeman. Mr. Vardeman or  
13 Ms. Zoll?

14 All right. The next is Heather Bernardon. Heather  
15 Bernardon? I don't see anybody responding.

16 Deborah Helm. Ms. Helm? Ms. Helm, would you like to  
17 speak?

18 MS. HELM: Hi.

19 THE COURT: Good morning.

20 MS. HELM: Good morning. I just want to reiterate  
21 what Ms. Sutton [sic] said, and also I want to add, from a  
22 person who has lost a home once before due to property value  
23 of just the banking system and other things, it's a very  
24 devastating thing to go through. And it's still very  
25 emotional for me to lose a hundred thousand dollars in

1 property value and try to find a home and can't afford to buy  
2 another home. Excuse me.

3 THE COURT: It's okay. Take your time. You live in  
4 the condominiums, Ms. Helm?

5 MS. HELM: Yes.

6 THE COURT: Thank you.

7 MS. HELM: I live in the condominiums, the Gallatin.  
8 And my main concern is in the future with the property values  
9 and coming home at night with the smell and not being able to  
10 enjoy the open area as they say. No matter how big or small  
11 your area is, it's not pleasant.

12 And also reiterating the confusion, whether it's per  
13 person, per household. Getting conflicting information was a  
14 little bit confusing.

15 THE COURT: Do you understand it now? Do you  
16 understand it now it's by household, per household?

17 MS. HELM: Well, now it is. And when you're told by  
18 an attorney, it's, no, per person and then somebody else,  
19 it's, no, per household, it's, you know, it's whatever. So  
20 five thousand dollars for a condominium that keeps going down  
21 and down, or I've -- I started maybe five years ago trying to  
22 find another place to live and done a lot of research and  
23 looking in property values, and so I'm pretty upon the  
24 difference between mobile homes, condominium, and houses. And  
25 the value for mobile homes and condominiums do not have the

1 resale value as the single-family home does. So the public  
2 does know about Bridgeton Landfill, and they are not buying in  
3 any area, including Gallatin.

4 So -- and I say that from personal experience just  
5 saying -- telling somebody where we live and they say, "Oh,  
6 sell now before it gets worse. Sell now because you're not  
7 going to get anything out of it."

8 And I do a lot of research on the internet and with  
9 my real estate agent and all that, and what I paid for my home  
10 may not be what it's worth. And I, at the time, three years  
11 ago, got a pretty good deal because I got it off of  
12 auction.com, and I thank God that I was able to find something  
13 after losing a hundred thousand dollars in my other home three  
14 years ago. So I just hope that -- understanding that five  
15 thousand dollars for a home that was worth a hundred thousand  
16 dollars, this particular home, not my other one, you know, ten  
17 years ago is not quite worth it.

18 THE COURT: Thank you, ma'am. Thank you for your  
19 comments.

20 I think I may have missed him, but I think Ms. -- is  
21 it Cherylee Johnson? Are there two Johnsons? Cherylee  
22 Johnson, do you want to say something?

23 MS. JOHNSON: No. But I also am confused about the  
24 per household. The original documents I received said that  
25 each person in my household had to fill one out.

1           THE COURT: We're going to do this one more time. I  
2 appreciate that.

3           Ms. Pollock, let's get this cleared up. Again, I  
4 think it's clear, but I don't blame folks for being somewhat  
5 confused.

6           Thank you, Ms. Johnson. You don't want to speak  
7 other than that, ma'am?

8           MS. JOHNSON: No.

9           THE COURT: And Ms. Johnson's concern, in case the  
10 court reporter didn't get it, was the household versus  
11 resident in terms of the settlement.

12          MS. POLLOCK: I won't hold everyone up while I try to  
13 find the actual language in the release, but the way the  
14 settlement works, Your Honor, and for everyone else in the  
15 courtroom, is that there's a certain amount of money that has  
16 been provided, offered by the defendants per door or per  
17 address; so sometimes I use the word "household," and that can  
18 be taken as per family. And so to the extent I have confused  
19 people by that, I'm sorry.

20          THE COURT: So let me ask you this question. You've  
21 got one person living in -- let's use the houses. You have  
22 one person living in a house. That household gets \$35,000.  
23 You have ten people living in the house, that household gets  
24 \$35,000.

25          MS. POLLOCK: Correct.

1 THE COURT: Same thing with the condominiums and same  
2 thing as with the mobile homes.

3 MS. POLLOCK: Correct.

4 THE COURT: With the different values.

5 MS. POLLOCK: Correct.

6 THE COURT: All right. And that's the way I  
7 understood it all along, I'll be honest with you, but I  
8 understand why folks might be confused.

9 All right. Ms. Martha Watson. Ms. Watson, would you  
10 like to say something, ma'am?

11 MS. WATSON: Everything has been said.

12 THE COURT: Thank you, Ms. Watson. I appreciate it.

13 Mr. and Mrs. Wyatt, W-Y-A-T-T. Mr. and Mrs. Wyatt.  
14 I think it's Connie and -- I got them both, Connie and maybe  
15 Gloria.

16 UNIDENTIFIED SPEAKER: They're not here.

17 THE COURT: They're not here? Thank you.

18 All right. Patricia Figura. Ms. Figura? Ma'am,  
19 would you like to say something?

20 MS. FIGURA: Actually, I would.

21 THE COURT: Okay. Thank you. Come on up. Good  
22 morning.

23 MS. FIGURA: I, too, like several people that are my  
24 neighbors, have invested an immense amount of --

25 THE COURT: Ms. Figura, I'm going to ask you

1 something. You and I share the same malady: We're both  
2 short. So would you move to the side and move that microphone  
3 over -- there you go -- so I can see you? Eitherway. So I  
4 can see you. There you go.

5 MS. FIGURA: I purchased the condo. I had to  
6 purchase with cash because of a credit issue I was having. So  
7 to be able to use any money I had at hand to have a home, I  
8 used that money to buy this condo and also to do repairs that  
9 needed to be done in the condo.

10 So I'm at the point where I don't have extra money  
11 for added features; so living there and being able to enjoy my  
12 surroundings became a horrifying adventure because it just  
13 stunk. And I work in Creve Coeur. I work with people who  
14 drive all around, and they also let me know how nasty  
15 Bridgeton smells.

16 So I wanted to live there for the rest of my life  
17 If I need to leave, need to go and move, I'm not going to have  
18 any money to find another place to live because of this issue  
19 with no one wanting to purchase any property in and around  
20 Bridgeton because it stinks.

21 And I don't know how bad it's going to get. I can  
22 only imagine once they start doing things that they say they  
23 need to do to correct the problems that if it is going to get  
24 that bad, I can't imagine living there or anybody else wanting  
25 to.

1 And it does smell. Even though they say there's  
2 structures and vehicles on highways that can disperse the  
3 smell, on a good day it still smells. On a bad day it's  
4 almost unbearable to get from my car into the parking lot 80  
5 feet to my front door -- that I have completely dosed up so I  
6 don't get any of the smell inside.

7 That's all I have to say.

8 THE COURT: Thank you, ma'am.

9 MS. FIGURA: Thank you.

10 THE COURT: Next is Sharon Bishop. Ms. Bishop, would  
11 you like to say something, ma'am?

12 MS. BISHOP: No, thank you.

13 THE COURT: Thank you, ma'am.

14 Martha Watson? Ms. Watson, are you here? Oh, you  
15 actually filed two. Yeah, you're confusing me. You filed  
16 two. So I'm assuming you still don't want to talk. The  
17 second Ms. Watson doesn't want to talk. Sorry. I should have  
18 scratched that off.

19 Mary Smith? Is Ms. Smith here? Okay.

20 David Blackwell? Mr. Blackwell, would you like to  
21 say something, Mr. Blackwell?

22 MS. BLACKWELL: Yes, I would.

23 THE COURT: Please come up.

24 MR. BLACKWELL: Good morning.

25 THE COURT: Good morning, sir. How are you?

1 MR. BLACKWELL: Good.

2 THE COURT: Good.

3 MR. BLACKWELL: I've got some things here I've sort  
4 of written down. I'll try to stay in those parameters. Some  
5 of them have been addressed, so please bear with me.

6 THE COURT: Fair enough.

7 MR. BLACKWELL: Actually, when I wrote this thing  
8 this was Wednesday, and it was a pretty day like everywhere  
9 else, and I had to write it inside because it was smelling  
10 Wednesday morning when I was going to go outside and write it.  
11 All this fine weather we've been having this summer we don't  
12 seem to enjoy that much because that wind's coming out of the  
13 northwest to keep things cooled down. At the same time, it  
14 blows off the dump and right over our subdivision, so  
15 therefore, we spend most of our time inside. But actually --  
16 forgive me for a second.

17 THE COURT: It's okay.

18 MR. BLACKWELL: In January I was diagnosed with  
19 cancer, carcinoid tumor cancer. That's an oddball cancer  
20 that's -- that's off the family that Steve Jobs had that they  
21 don't have a real answer as to what that came from, I don't  
22 believe. But it's amazing that the people at Siteman don't  
23 know what's going on at the landfill. But I've had some  
24 issues with that. They were able to do surgery and get most  
25 of it out, I believe; so that's a good thing.



1 I've had trouble with the reading of the  
2 documentation on the document as far as what it says on the  
3 first page of all the documents I've read thus far is  
4 defendants seeking property damage, not personal injuries.  
5 And it seems that it went from that to right into some kind of  
6 injuries issue, the health issues. And I just have a hard  
7 time understanding how it went from one item to the other.

8 I think I counted it up. I think that the plaintiffs  
9 might have barely mentioned it twice, depending on how you  
10 read the wording, and the defendants I read it, I think, in  
11 the document was 79 times. So it has obviously become quite  
12 the issue as far as where health is concerned.

13 And as I say, this thing was originally set up, I  
14 thought, as an odor nuisance. Maybe I misunderstood.

15 And as far as the money is concerned, I keep hearing  
16 the attorneys complaining about the million plus they're  
17 getting. And to be a little bit -- a little levy here,  
18 maybe we wouldn't be here today if they decided to donate  
19 their funds to the whole thing and we wouldn't be here today.

20 But back on track, Your Honor, the money that's  
21 involved here is a net payment. I keep hearing \$5,000.  
22 Well, the lawyers' fees come out of that. Also, you have  
23 taxes and most occasions they're going to come out of that.  
24 You're looking at a net of seventeen, eighteen thousand  
25 dollars, and this is for the subdivision which is the highest

1 paid group in the group.

2 And seventeen, eighteen thousand dollars isn't a  
3 whole lot when you really break it down. I lookat it as like  
4 I can make eighteen house payments with it, or I can spend the  
5 eighteen thousand dollars I spent on my surgery here in March  
6 for it. But like I say, it just doesn't seem like a whole lot  
7 of money when you start getting into your property damages and  
8 values.

9 But the issue with the dating, apparently you guys  
10 have addressed that already. I guess that's --

11 THE COURT: The date of the --

12 MR. BLACKWELL: Yeah. When it becomes active.

13 THE COURT: Got it.

14 MR. BLACKWELL: The only discrepancy I see now with  
15 that is the people that signed early, they get a four-month up  
16 on it; so if you became ill during that time frame that  
17 anybody did in August 8, I guess you just messed up by not  
18 signing early. That's the only constant date I see in this  
19 thing is in the document where it goes from November 1, 2010,  
20 to December 23 -- or to December 5, 2013. That's the only  
21 time I see that actually stays constant as a date involved  
22 with anything.

23 Well, Your Honor, you know, at this point the way  
24 things are written up, I don't see -- it's like you're signing  
25 a big giant disclaimer, basically, is sort of the way I sort

1 of see the whole thing. And the way it's written at this  
2 point I don't see how I can actually, in good conscious, sign  
3 it so -- but hopefully you guys will get it worked out. But  
4 thank you very much.

5 THE COURT: Mr. Olmsted, thank you for your  
6 comments -- or Mr. Blackwell, I'm sorry. Thank you for your  
7 comments.

8 I'm going to ask the lawyers to address each one of  
9 these issues when we're all finished here with the folks.

10 Thomas and Jill Olmsted? Mr. and Mrs. Olmsted?  
11 Either here or both? Neither.

12 Bruce Bennett? Mr. Bennett? Would you like to say  
13 something, Mr. Bennett? Good morning, Mr. Bennett.

14 MR. BENNETT: On behalf of all the condo people here,  
15 Mary Beth -- I mean, I stand behind everything they say. And  
16 my major concern is the property value, and that's really all  
17 I wanted to -- I know everybody's repeated that, but I wanted  
18 to come up here in front of you and everyone and state that  
19 myself.

20 THE COURT: Thank you.

21 MR. BENNETT: Yes.

22 THE COURT: I appreciate it. Thank you, sir.

23 MR. BENNETT: Thank you, sir.

24 THE COURT: Leah Reed. Ms. Reed, would you like to  
25 say something?

1 MS. REED: Can I speak right here?

2 THE COURT: Well, you're going to have to really  
3 speak loud.

4 MS. REED: Okay. I think that this stands on --my  
5 documents stand for itself. The only thing I don't understand  
6 is how the comparison can be made, the monetary value for  
7 people who live in condos and homes where they are to stay,  
8 and apartments and trailers can leave. They can take the  
9 money and they can move. A trailer can go. The people in the  
10 apartments can go. I don't understand that.

11 THE COURT: Thank you, ma'am.

12 Joseph and Deanna Smith? There you go. Would you  
13 like to say something, Mr. Smith?

14 MS. SMITH: Yes, sir.

15 THE COURT: Please.

16 MR. SMITH: And I'm going to be speaking on behalf of  
17 my wife.

18 THE COURT: Good. That's fine. My wife never lets  
19 me do that.

20 MR. SMITH: Yeah, this is that rare case for me too.  
21 Just wanted to kind of speak on some notes that I wrote down.

22 My wife and I and our two kids were residents of the  
23 Spanish Village area. We're looking to stay in the settlement  
24 case -- I'm sorry, the settlement class.

25 However, we do not feel like the settlement amount is

1 enough based on the loss of enjoyment, as defendants said, and  
2 also based on the potential loss of property value, as a lot  
3 of the other speakers said.

4         It's based on the fact that our house is currently  
5 for sale. We immediately started looking for a safer living  
6 environment for our two kids, who they're two and six months.  
7 But we are experiencing difficulty in securing a buyer of the  
8 property. We've had several showings of the house through our  
9 realtor, but we haven't had any offers. We've had  
10 approximately twelve showings. And when we ask for potential  
11 buyer feedback from the realtor, the Kelly Hager Group, we  
12 were told that the area and the landfill issues were primary  
13 cons of the house.

14         And they also made note that Bridgeton was looked at  
15 as a good area; that a lot of people were interested in buying  
16 property in that specific area. And this is despite  
17 improvements that we've made to the house and the fact that  
18 our listing price is the same as it was when we first bought  
19 the house.

20         We are worried about not being able to sell the house  
21 and but want to make the specific note that when we first  
22 bought the house, we weren't notified about any smell coming  
23 from the landfill. And it has definitely been, you know, a  
24 hindrance on enjoying the house, outside.

25         We've had several people, family members from out of

1 town, you know, asking us about it because it seem to have  
2 just kind of popped up. As soon as we bought the house, the  
3 issues kind of started. So that's pretty much my spiel.

4 THE COURT: Thank you very much.

5 Finally, in terms of the objectors, John James, who  
6 Mr. Dan Finney is going to speak for, Mr. Finney filed an  
7 objection on behalf of Mr. James.

8 MR. FINNEY: Your Honor, I'd like to elaborate a  
9 little bit on some of the comments that I made in chambers.  
10 With respect to this class action lawsuit, I only represent  
11 John James. We have additional lawsuits pending against the  
12 defendants and are filing additional lawsuits for people who  
13 have opted out of the settlement.

14 I have heard a lot of the objections to the  
15 settlement, and I've heard a lot of the problems with the  
16 release and have noticed them myself, but for the purposes of  
17 my discussion today, I'm just limiting them to the ones that  
18 I'm bringing forth on behalf of Mr. James.

19 The problem that I see in the release is generally  
20 the situation is still very fluid in the landfill and in the  
21 surrounding area. There are uncertain damages and problems  
22 that could happen or could not happen. The one certain damage  
23 that is happening is the property values have been destroyed.

24 The issue for me particularly is that there is a real  
25 question of radiation contamination in the surrounding area.

1 There is no question that there's radioactive material in the  
2 landfill that is at risk of being consumed by the fire that's  
3 currently active there, and there is also the question of  
4 whether the radiation has already migrated off of the site  
5 and, if it has, to what extent is the contamination and what  
6 sort of problems does that pose health-wise and otherwise?

7         So we have a pending class action under the  
8 Price-Anderson Act which is awaiting the results of those  
9 tests and the analysis of the test results that are coming in.  
10 I know some have been published. I also am aware that there's  
11 some that have not been published. And all of those test  
12 results need to be evaluated by health physicists, and there's  
13 going to be a fierce debate about what the consequences are  
14 depending upon what position you're coming from.

15         Knowing that we had a pending lawsuit, which was  
16 filed either right before or right after this case was  
17 announced to be settled, I started having discussions with the  
18 plaintiffs' attorney and the defense attorney about the  
19 release, which I got a copy of since some of my clients are  
20 class members of this action, and I was concerned about the  
21 language in the release as being too restrictive in general  
22 but in particular with respect to how it might influence my  
23 own lawsuit.

24         The release appeared to give up things that were not  
25 contemplated to be a part of the odor lawsuit. \$ I had some

1 discussions, and as a result of those discussions, they  
2 modified the release, but the modification is still very  
3 problematic for a number of reasons which I'm going to put out  
4 right now.

5 The language of the modification links the future  
6 issues directly to the allegations in my lawsuit with respect  
7 to radioactive materials. I'm not going to tell the Court  
8 that my lawsuit has identified every single problem that can  
9 be associated with radioactive material as it's p'd at  
10 present, and the language here is -- basically says "permit  
11 recovery under the Price-Anderson Act as is purportedly  
12 alleged in John James versus the Bridgeton Landfill, et  
13 cetera."

14 I'm going to tell the Court that I am not going to  
15 represent that I feel comfortable that the allegations in my  
16 petition, in my complaint, right now completely cover all of  
17 the radioactive consequences. To link it to the allegations  
18 is problematic for me and for my client.

19 The second thing is that this requires actual  
20 presence of radioactive contamination on each property owner's  
21 property in order for them to be able to recover under the  
22 Price-Anderson Act. We discussed in chambers a possibility,  
23 which is being contemplated by the government officials of  
24 Bridgeton and elsewhere, that the fire can reach the  
25 radioactive material and cause radioactive material to be



1 emitted in the smoke, et cetera, which could possibly trigger  
2 a evacuation.

3 I think the fact that they are actively and have  
4 aggressively prepared evacuation plans for the entire area,  
5 including grade schools who have had meetings to discuss  
6 evacuation plans, and DePaul Hospital, et cetera, indicates  
7 that as far as the people who are dealing with the landfill  
8 are concerned, evacuation is a possibility that needs to be  
9 planned for.

10 If that were to happen and people were evacuated,  
11 they would have lost the use of their property due to a  
12 radioactive incident. In my interpretation of the  
13 Price-Anderson Act, that would be compensable, but according  
14 to this release, they would be giving up the rights to be  
15 compensated because even though they have lost their use of  
16 their property by being forced to leave, they would not  
17 necessarily have physical contamination on their property.

18 The other problem with the whole thing is linking it  
19 directly to the Price-Anderson Act is, the Price-Anderson Act  
20 is a statute that is still being dissected by the courts of  
21 appeal, and as recently as just last year a ruling came down  
22 that affected a major lawsuit which is being appealed further,  
23 which you just don't know what is going to be included in a  
24 Price-Anderson Act in the next three, four, five years.  
25 Certainly you don't know within the lifespan of my lawsuit

1 whether or not that law will be further defined.

2 And so I think that this language here, even though  
3 it purports to address the issues that I have, it's way too  
4 restrictive, and it forces these people who may have otherwise  
5 had an opportunity to consider this offer, to have to reject  
6 it because it eliminates their chances to proceed further with  
7 a situation that frankly will be a whole heck of a lot more  
8 serious than simply enduring the odor.

9 So on behalf of Mr. James, I would just simply like  
10 to say that we believe that this settlement should not be  
11 approved until such time as the release is redrafted to really  
12 just address the issues that this lawsuit is supposed to  
13 address.

14 THE COURT: Mr. Finney, thank you very much.

15 Ladies and gentlemen, for your information, the  
16 lawsuit that the lawyers keep talking about that's pending --  
17 it was filed April 11 of this year. I'm not sure where that  
18 coincides with, that date coincides with when settlements were  
19 signed or not signed, things of that nature. I will let the  
20 lawyers handle that.

21 But the defendants -- the plaintiff in the lawsuit  
22 is, in fact, Mr. John James. And the defendants -- there's a  
23 number of them, and I'm going to name them just so you know:  
24 Mallinckrodt Incorporated; Covidien, Incorporated; Cotter  
25 Corporation; Rock Road Industries; Republic Services, Inc.;

1 Allied Services, Inc.; and the Bridgeton Landfill LLC. Those  
2 are the seven defendants in that lawsuit.

3 And the lawsuit is in its infancy stage. I don't  
4 think Mr. Finney has had an opportunity to have the defendants  
5 served with the papers yet. So that's where we are. That's  
6 where this case is. That's not my particular case.

7 Before I let the lawyers talk, did I miss anybody who  
8 filed an objection? Sir, what's your name?

9 MR. MANASO: Ronald Manaso.

10 THE COURT: Mr. Manaso, did you file an objection?

11 MR. MANASO: Yeah.

12 THE COURT: How come I missed that? Would you like  
13 to say something, Mr. Manaso?

14 MR. MANASO: No. But I just wanted to make sure I'm  
15 up there.

16 THE COURT: Yeah. I don't know why I missed it. I  
17 did -- actually, I just skipped your name. It's on my list.  
18 I apologize. Ronald Manaso. You live at 4159-C Gallatin,  
19 right?

20 MR. MANASO: Right.

21 THE COURT: Got you. I apologize, sir.

22 MR. MANASO: I think I'm going to look for a place in  
23 the city to live.

24 THE COURT: That's where I live.

25 Yes. Ms. Sutterfield?

1 MS. SUTTERFIELD: Would it be possible for me to make  
2 one more statement?

3 THE COURT: Sure. Would you do me a favor, Ms.  
4 Sutterfield? It's really tough on the court reporter --

5 MS. SUTTERFIELD: Sure.

6 THE COURT: Did I miss anybody else? Good.

7 MS. SUTTERFIELD: I think it's worth reiterating what  
8 the lady in the corner said. I guess I didn't fully  
9 understand that renters --

10 THE COURT: Understand the what?

11 MS. SUTTERFIELD: That renters, that people renting  
12 in the same areas that we live and own in, are being paid the  
13 same amounts as we are. If I were a renter, I think that  
14 would be a pretty good deal. Five thousand in the Gallatin  
15 area there, the Carrolton condos, would cover my relocation  
16 fees. It would cover moving. It would cover any expenses I  
17 had. It would be a reasonable amount, I think.

18 I think it's ridiculous to think that a homeowner,  
19 though, would get the same amount. I think it's worth  
20 pointing out. I think that's a really great point.

21 THE COURT: I understand. Thank you, ma'am.

22 I'm going to ask Ms. Pollock to address the four or  
23 five issues actually Mr. Blackwell brought up but others.  
24 Please address whatever issues you want to address in response  
25 to these questions and maybe some answers. Then the defense

1 counsel, Mr. Beck, is going to do the next.

2 MS. POLLOCK: Thank you, Your Honor. Let me just  
3 start off by saying that for everyone that voiced objections  
4 here today, we're not discounting your objections. We're not  
5 discounting that you shouldn't feel the way that you feel. We  
6 know you're upset. We know that your investment in what could  
7 be one of your largest assets is at risk. We understand that.

8 The point of where we are today is that this is an  
9 option for you and it's a compromise, and all settlements are  
10 compromises of what you could hopefully try to get, you know,  
11 at court in front of a jury. But that's a risk. And there's  
12 a lot of risks in cases like this.

13 So, you know, to the extent -- and I'm not saying  
14 this, you know -- I hope to not come across insensitively. If  
15 you want to take that option, if you don't want to take this  
16 option but you want to try to get a better deal, by all means  
17 you should try it. You should do it.

18 One of the people had mentioned that you felt like we  
19 were hassling people in the neighborhood. And I apologize.  
20 Our firm apologizes if that is how it came across in any way.  
21 It was our attempt to get out and meet with as many people as  
22 possible. People -- you know, we found in talking to people,  
23 people had -- they had really thought this through, and they  
24 had questions, and we were trying to reach as many people as  
25 possible, because what we haven't really talked about is the

1 way that the settlement was divided up was per address, but  
2 some people have moved, and so even though there's -- you  
3 know, we're looking at a hundred homes in Spanish Village, but  
4 there had been people that had lived in Spanish Village for  
5 only a portion of the relevant time frame who have since moved  
6 to other states, to elsewhere in the city and in the county.

7           So it was our effort to try to canvass as broad of an  
8 area as possible and reach as many people as possible. So by  
9 no means was this ever hassling people. There was no  
10 aggressiveness from our part -- that was not our intent at  
11 all -- to get people to participate in this. It was again,  
12 like I said, just to reach as many people as possible. And  
13 we've said all along that if this isn't the deal for you,  
14 don't take it. You don't have to. It's fine.

15           And to address -- you asked me to address  
16 specifically Mr. Blackwell's comments. And we have talked to  
17 Mr. Blackwell several times, and he has legitimate concerns.  
18 And, you know, we've told him, we've explained to him and to  
19 other people as well, too, that if you have any kind of injury  
20 concern, this probably isn't the settlement for you, you know.  
21 And we still stand by that recommendation and that advice  
22 today as I sit here now.

23           One of the concerns as far as how much are the condo  
24 owners and tenants receiving versus the mobile home park  
25 people, the mobile home park is half the distance to the

1 condos. So in other words, the condos are twice as far. And  
2 that's not to dismiss or discount that the people in the  
3 condos didn't suffer. We know they did. We know that it  
4 smelled god-awful for several days for a long period of time.

5 But again, when we had -- we had to concede to the  
6 defendants that the odor, just by the nature of the way odor  
7 travels, it's still going to be stronger the closer in. And  
8 so the people in the mobile homes necessarily, you know, they  
9 experience worse odors. It doesn't necessarily mean that they  
10 didn't have -- you know, they did or did not have as much  
11 money invested in their property values. And I think there's  
12 a little bit of confusion here as far as what remedies are  
13 available to people in this case.

14 This is a temporary nuisance case. When we first  
15 filed it, we also filed it in the alternative as a permanent  
16 nuisance because this was back a couple years ago when all of  
17 this was starting to unfold. We didn't know what we were  
18 looking at, just as Republic didn't know exactly what the  
19 situation was back then, because everything was changing day  
20 to day.

21 As the case has proceeded, you know, in evaluating  
22 the strength of the case, this really is a temporary nuisance  
23 case because the -- a landfill can be cleaned up and can be  
24 operated correctly. I mean, we just have to concede that.

25 And so that makes it temporary because it can be

1 fixed. It doesn't mean it has been fixed to everyone's  
2 satisfaction, but it can be. So once we're talking about a  
3 nuisance that can be fixed, it changes the type of remedy  
4 that's available to people. No longer are we talking about  
5 how much property value that the people lost. Now we're  
6 talking about their loss of use and enjoyment in their  
7 property.

8           So one component of loss and enjoyment is: How much  
9 could you try to get in lost rents? There's a difference in  
10 rental value during the time of this nuisance when it's  
11 present. So this isn't a case where people could get a full  
12 buyout. We're talking about how people's lives, you know,  
13 their discomfort, their inconvenience, their annoyance.

14           So it's not completely fair to look at, well, the  
15 mobile home park's residents, the mobile homes cost less; they  
16 have less invested; I have more invested in my house or in my  
17 condo, because that's just not the kind of case or the way  
18 that the law affords remedies to people in a case like this.

19           Ms. Sutterfield and then some of the other people had  
20 also sort of adopted her points as well. She mentioned that  
21 the fear of the smell getting worse. And in general we've  
22 heard that from people that there is an uncertainty here.  
23 People don't know what's going to happen going forward.

24           And, again, that's a risk, and that's -- it's a  
25 calculated risk. And people have that choice. They can



1 decide that I'm willing to take the risk and see what happens  
2 in the future and hold all my rights, my bundle of rights,  
3 including my right to file an additional lawsuit, or, you  
4 know, I've looked at the situation; this is enough money for  
5 me; I'm just going to go ahead and waive any future rights.

6 So, again, that's why this case involves an opt-in  
7 settlement, and so it just depends. You can make that  
8 decision if you're willing to take the risk and see what  
9 happens in the future or not.

10 Another issue, too, that Ms. Blackwell had brought up  
11 was the fact that the renters, you know, they don't have the  
12 same vested interest as somebody that owns a property. And I  
13 addressed that just a little bit ago with the type of remedy  
14 that's available to you. But the other nature we found, too,  
15 in looking at the data for the renters, renters by nature are  
16 more mobile, and so they -- a lot of them, most of them,  
17 didn't live in their rental property the full window of the  
18 period that we're talking about of three years. So they  
19 didn't get -- I mean a few did, some did, but overall the  
20 renters only got paid for each day they lived in this area.

21 So you can't look at it as necessarily that they  
22 received five thousand dollars when, in fact, they only lived  
23 there for six months or only a year. They would have only  
24 received a portion of that reflecting the time frame that they  
25 lived in the area.

1 And I think, unless the Court has any more questions,  
2 that's all I have.

3 THE COURT: I think that's it.

4 You got a question, Mr. Sutterfield?

5 MR. SUTTERFIELD: Yeah. I'd like to make a statement  
6 on what she said.

7 THE COURT: You need to step up to the lecturn.

8 MR. SUTTERFIELD: This will be pretty quick. Rick  
9 Sutterfield. She's saying the smell is not as bad in the  
10 condos that it is in the trailer park or Spanish Village. I  
11 have friends that live in both places. I have stayed in both  
12 places. And she is terribly wrong.

13 It's ridiculous to even think that because the smell  
14 at one place can be there and not at the other place at the  
15 same time. You know, I can be at home or visit a person at  
16 the other place, be stinking at my house and not at theirs,  
17 and there's no difference in the strength of the odor of the  
18 smell. And it does not disperse anywhere near like she says  
19 she does through the traffic and 270.

20 THE COURT: Thank you, sir.

21 Okay. Mr. Beck.

22 MR. BECK: Thank you, Your Honor.

23 Your Honor, several of the objectors who spoke, as  
24 well as several who filed objections that I know Your Honor  
25 will consider fully as well, spoke of property value. Ms.

1 Pollock addressed that. And as I said earlier, and as Ms.  
2 Pollock reinforced, that simply in this case was not one of  
3 the remedies that was available, and therefore, at the time of  
4 mediation it really wasn't a remedy that could be considered  
5 as a basis for settlement.

6 And the settlement values focused really on the  
7 question of: What is the relative loss of use and enjoyment  
8 of property that people experienced as a result of odor? So I  
9 want to echo that without belaboring it.

10 With respect to the allocation, I want to make it  
11 very clear how it works and, that is, for a particular  
12 household there is a payment. If there is one person who  
13 lives in that household the entire time, it's their payment.  
14 If they live there part of the time and someone else lived  
15 there part of the time, they divide based on the number of  
16 days each lived there.

17 If there were multiple people living in the home all  
18 of whom could have experienced a loss of use and enjoyment  
19 during that period of time, they share equally in that;  
20 although, no minor child receives more -- as much as ten  
21 thousand dollars, so there's no guardianships and probate  
22 involved.

23 But that is the allocation. I think it's pretty  
24 clear in the documents, but I know the documents are also very  
25 long and written by lawyers; so they're not easy to understand

1 necessarily, but that is the allocation. That's what it has  
2 been at all times.

3 With regard to the risk of future odor, I know people  
4 are concerned about that, and I know that the media have  
5 supported that and the social media have supported that. We  
6 honestly believe that the more than \$100 million we've spent  
7 at Bridgeton Landfill and the more than \$200 million we've set  
8 aside for Bridgeton Landfill have done a lot of good, have  
9 done some good, and are going to continue to do some good, but  
10 I think there's one future event people are particularly  
11 concerned about, and that is that we negotiated an agreement  
12 with EPA to build what we call an "isolation barrier." Some  
13 people call it a wall. But a subsurface block so that the  
14 subsurface smoldering event which was clear over in the south  
15 quarry of Bridgeton Landfill, it's not in the north quarry,  
16 and we know that because we monitor temperature at every 20  
17 feet and all the way around it and in the north quarry. It's  
18 not through the neck of the quarries yet, and we don't expect  
19 it to be.

20 But against the possibility that some day in the  
21 future before the reaction stops reacting -- it's a chemical  
22 reaction in the subsurface stops reacting, that it would get  
23 all the way through the south quarry, then all the way through  
24 the north quarry, and then into the area where that low-level  
25 radioactive waste was received as cover soil in 1973 and has

1 been there for over forty years, a lot of things have been  
2 done.

3 One is EPA had us hire a consultant who published a  
4 study that is online at Westlakelandfill.com that you can  
5 read. And EPA's comments on that study are online on EPA's  
6 website talking about: Is that really a risk? Is that  
7 something that could happen? If it happened, what would it  
8 mean?

9 And our consultant's judgment and EPA's judgment is  
10 that there's no significant risk of any kind that that would  
11 ever happen. The reaction is not moving that way. It's way  
12 too far away. And in the meantime, we have this isolation  
13 barrier that will be built.

14 Secondly, there was an evaluation of, God forbid it  
15 got there, what happens next? Unlike what Mr. Finney has  
16 hypothesized, those reports both show this isn't a volatile  
17 material. It doesn't vaporize. It doesn't go into the air  
18 and start releasing stuff.

19 The only risk that was identified either by the  
20 consultants or by EPA is a relatively slight increase in a gas  
21 that is called radon that's all over the environment, but it  
22 would be more. It would be more. And EPA agreed that that  
23 was the one risk and that nobody could exactly quantify it,  
24 but they didn't think it was a significant risk.

25 But against that risk we're building this isolation

1 barrier, and that's why people are worried about future odor.  
2 What we're doing about that in our own right as we negotiate  
3 with EPA is trying to move the barrier as close to the  
4 material as possible so that we can go as shallow into the  
5 quarry as possible or into a ledge of the quarry as possible  
6 so we don't have to excavate a huge "V" and expose a bunch of  
7 waste, because it's exposing the waste that creates the odor  
8 that we worry about in the future.

9 We are aligned in that with Lambert Airport because  
10 Lambert is concerned about exposing any waste in the flight  
11 path of aircraft. They don't want birds to be attracted to  
12 the waste and get in the way of the aircraft. They're working  
13 with us to persuade EPA and to persuade the Corps of Engineers  
14 let's keep this barrier sufficient to be effective but as  
15 small an excavation as possible and as short in time an  
16 excavation as possible.

17 And I know from personal knowledge that EPA is  
18 pushing in that direction also. There will be an alignment of  
19 that barrier fairly soon, there will be an agreement on the  
20 barrier fairly soon, and we have been pushing that process as  
21 fast as we can.

22 There could be some odor during that period. We  
23 don't think it's comparable because of the reaction's nowhere  
24 close. We think most of the odor was from the chemical  
25 reaction in the subsurface in the south quarry. There could

1 be some odor just from exposing garbage, but it's not a unique  
2 kind of odor. It's what you have if you tried to cut into any  
3 landfill because there's no burning event going on over there.

4 So we think it's a very different thing than, for  
5 example, a year ago when we had to cut off those big concrete  
6 pipes that go in the landfill, and we actually gave people an  
7 option to go stay in a motel for a couple of weeks.

8 We think it's a very different situation. We're  
9 doing all we can to control it, and we welcome your input to  
10 EPA to say do all you can to prevent odor, because they will  
11 take that into account. They care.

12 But that is a future risk, and it's a future  
13 opportunity to make a claim that people are giving up if they  
14 sign this. And that's a reason that if that's a big issue to  
15 you, you should not sign this release and you should not  
16 accept this money. You should retain your rights. And if you  
17 want to bring your own lawsuit, you can, and we'll talk to  
18 you, just like we talk to everybody else.

19 I do want to make sure, Judge, that one thing is  
20 clear to everyone, and that is, we tried to be clear in the  
21 paperwork, but anyone who has not yet signed up for the  
22 settlement who decides following Your Honor's decision that  
23 they have elected to participate, will have seven days  
24 following the Court's decision to go ahead and participate  
25 whether they objected before, whether they opted out before,

1 whether they didn't answer before.

2           Anyone who makes the decision "I don't love it, but I  
3 think it's the right thing to do," can make that decision over  
4 the following seven days by contacting class counsel and  
5 deciding --

6           THE COURT: Seven days following my decision?

7           MR. BECK: Yes, Your Honor.

8           THE COURT: Part of my decision is going to be made  
9 today, and part of it will be made -- I'll explain it to you  
10 in a few moments.

11           MR. BECK: Right. But it's seven days following the  
12 initial approval decision, Your Honor. If that occurs today,  
13 it would be next Friday would be the deadline for that.

14           I'm just going to talk about a few things. Ms.  
15 Sutterfield asked a good question, which is we lawyers talk in  
16 shorthand and about technical things that we use a lot, but  
17 what did I mean when I said Deb Gray, the toxicologist, the  
18 Ph.D. toxicologist who reviewed the air monitoring data, said  
19 there was no increased risk?

20           And what she said -- and it's actually in a  
21 declaration that she submitted that is in the packages that  
22 should have been delivered to everyone yesterday who filed an  
23 objection -- is that she evaluated a lot of air monitoring  
24 that went on for a long time that looked for any chemical as  
25 well as radiation. She looked at the few detections that



1 there were and the levels that were detected, the length of  
2 time they were in the air at the landfill and, based on that  
3 evaluation, was able to say to a reasonable certainty that no  
4 one who is worried about having a disease as a result of  
5 exposure to chemicals from the landfill in odor, or anything  
6 like that, has a reason to worry about that; that there is  
7 not, based on all the known toxicology -- and there's been a  
8 lot of study of toxicology in the last twenty years -- is at  
9 an increased risk of disease from exposure to any of the  
10 chemicals that have been detected in any of the monitors that  
11 go around the perimeter of the landfill. So that's what I  
12 meant to express.

13 With respect to a couple more things, and then I'll  
14 get to Mr. Finney, I understand Mr. Blackwell -- and I'm sorry  
15 that Mr. Blackwell had the experience that he did. And I am  
16 grateful that it has resolved at least for now, and I hope it  
17 stays that way. And I fully appreciate if Mr. Blackwell says,  
18 "I just don't know, and therefore, I'm not willing to take the  
19 risk of giving up whatever claims I may have for this amount  
20 of money," that's the decision that you should make and that's  
21 why we made this an opt-out class.

22 What we are saying, though, is that even though every  
23 individual in this room may make that decision that this is  
24 not the settlement for me, that that doesn't mean that the  
25 Court should say to the 947 people so far who have said, "I do

1 want to settle this case, I do want to receive some money now  
2 and I'm comfortable with it," that those people shouldn't be  
3 able to do it simply because for other people it's not a good  
4 settlement. That's what we are asking the Court to do.

5 And I think we have addressed the property value  
6 situation. I think that there would be -- well, I think there  
7 have been a lot of media reporting. I think some of it's not  
8 been incredibly accurate. I think some's been exaggerated,  
9 but I understand how that reporting could make it hard to  
10 engage in a real estate transaction.

11 And hopefully as things continue to improve and we  
12 continue to invest in Bridgeton Landfill, people won't have  
13 that worry so much anymore. We're trying to address issues as  
14 they come up one by one, but it comes so fast sometimes that  
15 it's pretty hard to address everything.

16 And now, if I may, I want to talk about Mr. Finney's  
17 lawsuit. Mr. Finney's lawsuit was filed on April 11. Nobody  
18 has been served yet. So we're not sure if he intends to move  
19 forward or does not intend to move forward, but as of right  
20 now, there's not a lawsuit that I can defend because we  
21 haven't been brought into court to come to defend

22 The lawsuit claims that there is physical radiation  
23 damage to all the properties in this large area, and that's  
24 what we attempted to address with respect to the change to the  
25 release and the improvement of the release for the class

1 members.

2 But I will say this. It's not really a secret what  
3 the Price-Anderson Act requires in order to recover. We don't  
4 think Mr. Finney's complaint gets there, and we do think the  
5 release is protective in light of it.

6 And the best place to look is a decision that  
7 District Judge Fleissig of this district made in a case called  
8 McClurg v. MI Holdings. That's part of the Cold Water Creek  
9 litigation, Your Honor.

10 And on March 27, 2013, in a memorandum and order that  
11 is pretty detailed, Judge Fleissig first recognized that all  
12 radiation claims are exclusively governed by Price-Anderson,  
13 dismissed all the state law claims.

14 In Price-Anderson there's exclusive federal  
15 jurisdiction. It relates to what's called a public liability  
16 action, which is just any lawsuit seeking to impose damages  
17 for liability. It relates to anything called a "nuclear  
18 incident" as it's referred to in the statute, which is any  
19 exposure to radiation that allegedly causes either property  
20 damage or personal injury or death.

21 And what's important about Price-Anderson is it only  
22 allows a recovery if the person or the property has been  
23 exposed itself to radiation that exceeds what is called the  
24 "federal dose," the federally permitted dose threshold. Judge  
25 Fleissig determined in that case that the Cold Water Creek

1 plaintiffs had not alleged that they had incurred a federally  
2 regulated or permitted dose, gave them an opportunity to  
3 amend, but the point is, is that unless there is actual  
4 radiation exposure to the land or to the person exceeding the  
5 federally permitted dose, there is no lawsuit.

6 And that is decided in the McClurg case. It's  
7 decided in all the companion litigation over Coldwater Creek.  
8 It's absolutely certain law. There's no question about it.  
9 It's what the statute itself says. We don't think that  
10 pleading standard is met by the James lawsuit, but, of course,  
11 that could change.

12 And, ultimately, it's the reason why the release was  
13 written precisely the way that it was. The release says  
14 exactly what the law already is, which is there has to be  
15 physical radiation damage -- in this case to the property of  
16 the person because that's what the James case is about -- in  
17 order to permit recovery. And that is excepted from the  
18 release of claims. And, therefore, we believe the release is  
19 fair, reasonable, and adequate.

20 I will say in my defense that I shopped the language  
21 to Mr. Finney before we incorporated it in the agreement, and  
22 he declined to comment one way or the other about the  
23 language. So we were not able to address any concerns about  
24 it at the front end; rather, all we've gotten is the objection  
25 to the settlement, and that's what it is.

1 But we do not believe that there is off-site  
2 radiation from West Lake. We are happy that EPA yesterday  
3 published their report concerning the Bridgeton Municipal  
4 Athletic Complex where 55,000 surface screenings and 100 soil  
5 samples showed no exceedance of the levels that EPA expects  
6 and that EPA gave an absolute "all clear" to Bridgeton  
7 Municipal Athletic Complex after there was some hrouhaha that  
8 Mr. Finney was involved in earlier.

9 So, again, we think the release is fair. And if Mr.  
10 James doesn't think it's for him, he should not sign it. And  
11 that's true of anyone.

12 But, Your Honor, with that we request approval.

13 THE COURT: All right. Thank you. Ladies and  
14 gentlemen --

15 MR. FINNEY: Your Honor, may I respond for the  
16 record?

17 THE COURT: You may.

18 MR. FINNEY: First of all, I would like to say that  
19 it is true that Bill called me and said, "What do you think  
20 about this language?"

21 And I told him I didn't like it. And since I was not  
22 about to be put in the place of writing it for people I don't  
23 represent, possibly putting myself in a position to get sued,  
24 I declined to get further into it. But I did tell him what I  
25 didn't like.

1           Secondly, I disagree with his assessment of the law.  
2 I typically go to look at the Court of Appeals for my law, not  
3 District Court orders. And my understanding of the  
4 Price-Anderson Act talks about loss of use of property in  
5 addition to things that he's talked about. So I didn't know  
6 we were going to talk about the law today, but I do disagree  
7 with his analysis.

8           THE COURT: Thanks, Mr. Finney.

9           MR. BECK: Your Honor, I do need to say something

10          THE COURT: This is going to turn into closing  
11 argument.

12          MR. BECK: I just want to say something about the  
13 statement he made. The objection is not accurate

14          THE COURT: All right. We're going to leave that  
15 alone. We're going to -- the Court will -- I don't think  
16 that's what these folks are that worried about, to be honest  
17 with you.

18          MR. BECK: You had wanted me to correct that  
19 statement on the record.

20          THE COURT: Okay. Go ahead. I'm not sure what  
21 you're talking about; so . . .

22          MR. BECK: Your Honor, the objection alleges that  
23 defense counsel, which would be me, made statements to the  
24 media and class members about the release that were misstated,  
25 and I want to say for the record I have made zero statements

1 to any media and zero statements to any class members about  
2 the scope.

3 THE COURT: I forgot. I did. The contact between  
4 the parties, the plaintiffs and counsel was exclusively done  
5 by plaintiffs' counsel, is my understanding.

6 MR. BECK: Correct.

7 THE COURT: All right. I apologize. I did ask you  
8 to say that.

9 All right. Ladies and gentlemen, here's a couple  
10 things I'm going to say, and I'm going to let you all get out  
11 of here. For starters, one other thing -- and please  
12 understand I'm not trying to make lawyers on the plaintiffs'  
13 side by the statement I'm going to make sound like angels, but  
14 another thing I've never seen in my thirty years as a judge,  
15 and certainly never in a class action, I've never seen lawyers  
16 cut their fee before. Ever. Never. These folks cut their  
17 fee from 33 to 25 percent. And I'm not saying we need to give  
18 them a gold star for that, but I'm saying that is something  
19 I've never seen before in -- as long as I've been around here.

20 Secondly, I went on a road trip yesterday. I wanted  
21 to see where you all lived, and I wanted to see the -- I  
22 wanted to see the landfill. And I was out there probably  
23 about two and a half, three hours. I got a tour of the  
24 landfill. I rode around the entire thing. Then I wanted to  
25 smell what you're smelling. I wanted to see what it was all

1 about. And I don't blame you for not being happy with the  
2 smell. So it's not like I don't believe you smell it. I know  
3 it's there. I smelled it.

4 I also visited all three of your neighborhoods and  
5 drove around them, and I find them to be lovely neighborhoods.  
6 The Spanish Village -- I mentioned it to the lawyers that were  
7 driving me around yesterday, the Spanish Village with -- I saw  
8 kids playing in the woods and along the baseball diamond back  
9 there. I mean, I would have loved growing up like that.  
10 That's a kids' paradise with all that stuff they have  
11 available for the children.

12 I understand the concerns about the smell and the  
13 worrying about the health. You always worry about your family  
14 members' health issues, but I found it to be a lovely area.

15 I drove through the mobile home park, and, you know,  
16 I know we call it a mobile home park, but that sure didn't  
17 look that mobile to me. Those folks -- those things were  
18 there to stay from what I can tell.

19 And I'm not trying to argue with anybody that said  
20 anything. I'm not trying to convince you you're wrong or I'm  
21 right or anybody's wrong or right. I'm just telling you what  
22 I observed. That's a very stable, solid neighborhood. And no  
23 question about it, from my observation, it's very close to the  
24 landfill.

25 The third place we visited was the Terrace -- I'm



1 sorry -- the Gallatin complex. And I really didn't know what  
2 to expect because I heard most of the objections came from you  
3 folks that live in the condominiums there. And I just didn't  
4 know what to expect, and I again was happy to learn that  
5 it's -- I think it's a lovely complex. I saw people using the  
6 pool yesterday and maybe ten people out there jumping around,  
7 playing in a pool.

8           The apartments look really well maintained. The  
9 condominium looks really well taken care of. Seems like a  
10 very safe community. All these places -- in fact, I was very  
11 impressed with that whole area of Bridgeton, which I just  
12 don't get to that much, to be honest with you. I live in deep  
13 Southwest City. It just doesn't -- it's just not on my track.

14           So anyway, I did want to let you know that I did  
15 visit it. I can't tell you -- I really don't know if I  
16 smelled it after riding around through the landfill. I don't  
17 know what I smelled after that. You know, I don't know if I  
18 smelled it. I got a pretty good dose of it there, and I don't  
19 know that I've smelled it or didn't smell it in your  
20 neighborhoods, and I certainly believe that everything that is  
21 being said -- if it wasn't there, we wouldn't -- these guys  
22 wouldn't be offering \$7 million to settle the lawsuit. So  
23 it's there.

24           We keep talking about the opt-out, opt-in. And,  
25 look, I wouldn't even have considered -- this case wouldn't

1 have gotten off my desk if these and -- I didn't tell the  
2 lawyers this. They did this on their own. But unless you had  
3 an opportunity to say, "No, I don't want to be involved in  
4 this lawsuit; I'm going to file my own," I wouldn't have  
5 approved anything or even considered approving anything. That  
6 is a big deal to me.

7 You know, to me, if -- as a judge, I irritate 50  
8 percent of people every day, you know. Fifty percent. And  
9 that's even before I go home, you know. I irritate 50 percent  
10 of the people every day. Somebody walks out winning; somebody  
11 walks out losing. That's just the way my life is as a judge.  
12 That's what we do.

13 In this situation I don't feel like I'm irritating  
14 anybody because, even if I accept this and approve this  
15 settlement, you all still have every single right. You're not  
16 stuck with anything. You can go ahead and hire counsel. Mr.  
17 Finney looks like he's representing a number of folks already  
18 who have -- I'm not trying to give Mr. Finney business. He  
19 can do that on his own. But my point is, there are lawyers out  
20 there. We know there's lawyers out there. If you want to go  
21 file a lawsuit on your own, you have the right to do that, and  
22 that's your call.

23 The other -- the final thing I'm going to -- the  
24 second to last thing I'm going to say is, over the weekend I  
25 was reading an Eighth Circuit case, and I don't remember -- it

1 was one of those "In re" cases that we call in courts, that  
2 was a wireless case, a wireless -- long name.

3 I read an excerpt in the case that says the court has  
4 a duty -- in these types of cases, the court has a duty to the  
5 silent majority and as well as the vocal minority. You guys  
6 are the vocal minority. There's 900 and what, 947 folks that  
7 have opted in. They're the silent majority.

8 And I do have the responsibility to them, and simply  
9 because you aren't happy with it -- and I don't blame you for  
10 not being happy with it. I don't know where I'd be if I was  
11 living in one of those condominiums or the houses or the  
12 mobile home. I don't know where I would be. But you can't  
13 talk -- you're always talking about standing in other people's  
14 shoes. It's damn near impossible to stand in other people's  
15 shoes. You don't know how you're going to feel until you're  
16 there. It's hard to do that.

17 So I'm not being critical of anybody or any comment.  
18 I really appreciate the comments you've made. I think every  
19 one of them were very heartfelt, legitimate, logical. They  
20 made sense. I understood them. And I can certainly  
21 appreciate how you feel. But there's almost a thousand people  
22 out there that want this money from this settlement and they  
23 don't want to file their own lawsuit. If I say no to them and  
24 yes to you, that puts a thousand people damn near in the  
25 situation that I don't think is fair for me to do

1           So I'm telling you that because I was going to take  
2 this case under submission, but you all are here, you've been  
3 polite, and I don't want to make you go home thinking "What is  
4 this guy going to do?" I'm going to overrule all of your  
5 objections based on everything I've heard and read.

6           And one other thing. I said I would be brief, and  
7 apparently I can't. I've met with these lawyers more times  
8 than I can remember in any case I've been involved except for  
9 a real difficult patent case that Ms. Pollock was involved in  
10 years ago. I mean, seems like I saw this bunch of lawyers in  
11 my office once -- at least once every three or four weeks on  
12 something. And they're all nice people.

13           But my point -- I just want to let you know they have  
14 worked very hard on this, and I think I have worked really  
15 hard on this. I'm trying to do the right thing and be fair.  
16 That's the best I can do.

17           You may not think it's fair. You know, I understand,  
18 as I say, 50 percent of the people walk out of here perhaps  
19 thinking it wasn't fair, but that's part of the nature of my  
20 job.

21           So I'm going to overrule the objections that have  
22 been made. I'll do that in writing later on today.

23           And then the attorneys' fees, I see no reason not to  
24 approve those attorneys' fees based on what I know about  
25 lawyers and cases and how much money and time has been spent

1 on this case.

2 And subsequently I'm going to approve the settlement  
3 of this lawsuit assuming there's nothing unusual that pops up  
4 between now and then, and I don't see that happening. The  
5 lawyers have been prepared.

6 And the difference between the lawyers you see today  
7 and the lawyers when I first saw them at the scheduling  
8 conference when the lawsuit was first filed is night and day.  
9 I don't want to say they were at each other's throats, but  
10 they weren't -- it's not like they were all saying, hey, we're  
11 all, you know, we're all going to get together and sing  
12 "Kumbaya" and solve it. They were all fighting really hard  
13 for their clients.

14 Eventually, I forced them to go to mediation. They  
15 found a mediator in Chicago. I think I even recommended a  
16 mediator in Chicago, a former colleague of mine who is very  
17 brilliant, and they found somebody -- he had a conflict or  
18 something. Bottom line is they chose somebody from Chicago to  
19 help resolve the case, and he or she -- I don't remember --  
20 did a great job in my opinion.

21 So that's where we are. I thank you for your  
22 courtesy. I really think you all have been wonderful today  
23 considering what you're going through and the thought process  
24 what you're going to do next. I'm glad I'm not in your shoes  
25 because I don't know what I would do next either.

1           Again, I applaud your neighborhoods. I think -- I  
2 hope things work out for you. And I just hope the media  
3 and -- and I'm not blaming the media for anything but it  
4 just -- it seems like every four days there's another damn  
5 article about this, and that's just not helping you guys at  
6 all in terms of somebody wanting to sell the property. That's  
7 not very helpful. But they've got a job to do to.

8           So good luck with all of this. Thank you again for  
9 your courtesy. Thanks for being here. And I really wish all  
10 of you the best of luck. Thank you.

11                   **(PROCEEDINGS CONCLUDED AT 11:20 AM.)**

CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 79 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 5th day of August, 2014.

\_\_\_\_\_  
/s/Shannon L. White  
Shannon L. White, RMR, CRR, CCR, CSR  
Official Court Reporter